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11 *Attorneys for Defendant Facebook, Inc.*

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 13 **UNITED STATES DISTRICT COURT**  
 14 **NORTHERN DISTRICT OF CALIFORNIA**  
 15 **OAKLAND DIVISION**

16 MATTHEW CAMPBELL and MICHAEL  
 HURLEY,

17 Plaintiffs,

18 v.

19 FACEBOOK, INC.,

20 Defendant.

Case No. C 13-05996 PJH-SK

**CLASS ACTION**

**FACEBOOK’S STATEMENT IN SUPPORT  
 OF PLAINTIFFS’ MOTION FOR  
 PRELIMINARY APPROVAL OF CLASS  
 ACTION SETTLEMENT**

Hearing

Date: April 19, 2017

Time: 9:00 a.m.

Judge: Hon. Phyllis J. Hamilton

Place: Courtroom 3, 3rd Floor

1 Defendant Facebook, Inc. supports Plaintiffs’ request for preliminary approval (Dkt. 227) of  
2 the proposed class settlement as fair, reasonable, and adequate.

3 Among other relief provided by the Settlement Agreement, Facebook confirmed that the three  
4 practices at issue in the case had ceased (as well as the dates of cessation):

- 5 (1) including counts of shares of links in messages in the anonymous, aggregate counts  
6 next to the “Like” button on third-party web pages (**December 2012**),
- 7 (2) including counts of shares of links in messages (and related demographic information  
8 regarding senders of such messages) in the anonymous, aggregate counts in its  
9 “Insights” interface (**October 2012**), and
- 10 (3) considering anonymous, aggregate counts of shares of links in messages as part of its  
11 backup algorithm to determine links to include in its “Recommendations Feed” on  
12 third-party websites (**July 2014**).

13 (*See* Settlement Agreement and Release (Dkt. 227-3) ¶ 40(a).)

14 Additionally, Facebook provides advertisers a range of options for targeting advertisements to  
15 people using Facebook, and, as Facebook has contended throughout this litigation, none of the above  
16 practices permitted advertisers to target advertisements to people based on links shared in  
17 messages. As part of the Settlement Agreement, Facebook also confirmed that, as of the date of  
18 executing the Settlement Agreement, Facebook was not using data regarding links shared in  
19 messages for four identified practices, including targeted advertising. (*See id.* ¶ 40(b).)

20 Furthermore, because consent is a complete defense to claims asserted under the Wiretap Act  
21 (18 U.S.C. §§ 2510, *et seq.*) and California Invasion of Privacy Act (CIPA, Cal. Penal Code § 631)—  
22 the sole remaining claims in this action—one of the central contentions that motivated the filing of  
23 Plaintiffs’ lawsuit in December 2013 was that Facebook’s disclosures allegedly were inadequate to  
24 obtain consent. (*See* Dkt. 25 ¶¶ 1, 2, 38, 48.) Indeed, in ruling on Facebook’s Motion to Dismiss in  
25 December 2014, the Court declined to dismiss Plaintiffs’ claims based on the provisions in  
26 Facebook’s then-existing disclosures without a further factual record. (*See* Dkt. 43 at 14-16.) As the  
27 Settlement Agreement makes clear, since that time (specifically, in January 2015), Facebook revised  
28 its Data Policy to state, *inter alia*, that Facebook collects the “**content** and other information” that

1 people provide when they “*message* or communicate with others,” and to further explain the ways in  
2 which Facebook may *use* that content. (Dkt. 227-3 ¶ 40(c) (emphasis added); Facebook Data Policy,  
3 §§ I-II.)<sup>1</sup> These enhanced disclosures—enacted *after* the filing of this action and *after* the Court’s  
4 ruling on the Motion to Dismiss—are among the benefits to class members. (*See id.*)

5 Finally, pursuant to the Settlement Agreement, Facebook has agreed to display additional  
6 explanatory language on its website regarding its internal processing of URLs shared in messages—  
7 specifically, the fact that Facebook “use[s] tools to identify and store links shared in messages,  
8 including a count of the number of times links are shared.” (*Id.* ¶ 40(d).)

9 In short, the relief provided by the Settlement Agreement achieves the core non-monetary  
10 relief sought by the action and relevant to the Rule 23(b)(2) injunctive-relief only class certified by  
11 the Court.

12 As the Court is aware, this litigation was hard-fought and spanned several years. The parties  
13 engaged in almost two years of extensive discovery, including the production of tens of thousands of  
14 pages of documents and other electronic discovery, fact and expert depositions of 18 witnesses  
15 (spanning 19 days of testimony), informal conferences and discussions, substantial discovery motion  
16 practice, and the exchange of hundreds of pages of written discovery requests and responses. (*Id.*  
17 ¶ 7.) Last year, the Court refused to certify a Rule 23(b)(3) damages class, stating that it was  
18 “persuaded by the fact that many class members appear to have suffered little, if any, harm,” and  
19 noting that “the question of ‘whether or not there was actual damage to the plaintiff’ . . . would be  
20 answered in the negative for many class members.” (Dkt. 192 at 26.) The Court did, however,

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28 <sup>1</sup> A true and correct copy of Facebook’s current Data Policy (*available at*  
<https://www.facebook.com/about/privacy/your-info>) is attached to this Statement as Exhibit 1.

